

Saving lives via application of Islamic alternative dispute resolution: A review of Maryam Sanda case

Abdulkareem Azeez

Senior Lecturer, Department of Commercial Law, Modern College of Business and Science, Oman

Abstract

Crimes in most common law jurisdictions including Nigeria are considered as offences against the State with the victim of such crime having no say as to whether the accused be prosecuted. Once the commission of a crime is reported, the accused will be arrested after reasonable investigation and tried before a competent court of law. The State through the office of the Director of Public Prosecution (DPP) proffer a charge against the accused, arraign and prosecute him using the victim as the prosecution's witness. And the power to discontinue such a case ironically lies not in the victim or his family but exclusively with the Attorney General of the federation or any of its agents. However, Islamic law provides a leeway for the victim's family to accept diyya (Blood Money) from the accused or his family. This research is an attempt to address certain pertinent questions arising from Maryam Sanda's case especially on the lacuna created by the criminal justice system in providing a better remedy to the victim's family and most importantly to the child or children of the marriage where the offence is mariticide. And to explore the alternatives provided by Islamic law in cases of murder and the philosophy behind such provision.

Keywords: Islamic law, criminal law, dispute resolution, blood money, Maryam Sanda

Introduction

The criminal justice system in Nigeria is regulated by the Penal Code in the North and Criminal Code in the South ^[1]. Both codes classified crimes as offences against the State and empowers only the State through its instrumentalities to arrest, arraign, prosecute offenders ^[2] and in rare circumstances, discontinued a case by invoking the Nolle prosequi clause ^[3]. The role of the victim is limited to being a complainant and witness for the State. In cases of murder, the victim's family cannot under the current legal framework discontinued the case without the approval of the Attorney General.

However, Islamic legal system provides for an alternative means of resolving crimes by substantially involving and empowering the victim or his family in cases of murder on how best to resolve the conflict ^[4]. Whereas, Islamic law provides for hudud punishment ^[5], in certain exceptional cases, it provides for an option for financial compensation in form of Diyya or blood money as it is loosely translated ^[6]. The philosophy behind such provision is never to underestimate commission of heinous crime like murder but to be practical and realistic in terms of addressing conflicts. For instance, where a breadwinner of a family is killed and survived by wife and children, the conventional legal system arrests the offender, arraign, prosecute and eventually send him to jail. In this process, the government has no special

package for the family of the deceased and there are no financial emoluments given to the deceased immediate family to address their financial needs. This lacuna is being taken care of by the provision of blood money which is given to the family of the deceased as a subtle way of compensation with the singular intent of financially providing for the needs of the deceased family. Similarly, where the offence is mariticide ^[7] as in the present case under review, the conventional criminal justice system has no provision for the children of the marriage and their financial wellbeing. The system is only concern with sending the accused into jail where the state resources will be used to provide him with basic needs, whereas, the wife and children of the deceased will be languishing in abject poverty. Put another way, the system convicted Maryam for allegedly killing her husband, and sentenced her to death by hanging without making any consideration for the daughter of the marriage. These are serious societal dilemma which were not addressed by the criminal justice system, but we can find succor from the provision of Diyya under the Islamic criminal law.

Maryam Sanda's Case

Sometimes in November 2017, Maryam was accused of killing her husband (Bilyamin Muhammed Bello) with a knife. The incident occurred after Maryam requested to use her husband's mobile phone. She discovered certain nude photo of a lady on her husband's phone and that was the genesis of a three-year legal battle. She was arrested, arraigned and tried for a two-count charge of homicide and ancillary offence together with her mother, brother and housekeeper who were jointly accused of tempering with key evidence. In is important to note that Maryam and her

¹ Tosin Osasona "Time to Reform Nigeria's Criminal Justice System" Journal of Law and Criminal System, Volume 3, Issue 2, 2015

² Ibid

³ Nolle Prosequi is the statutory powers given to the Attorney General of the State or Federation to take over or discontinued any criminal case at any stage before the final judgement. See Sections 174 (C) and 211(C) of the Constitution of the Federal Republic of Nigeria (as amended). See also Chief Lere Adebayo v The State (2012) LEPLR

⁴ Surah An-Nisaa 4v92. See also Sahih Al-Bukhari 9:83:41-50

⁵ Surah AlMaaida 5v45

⁶ Surah An-Nisaa 4v92

⁷ Mariticide is a crime where a woman or wife kills her husband. See Merriam-Webster Online Dictionary available at <https://www.merriam-webster.com/dictionary/mariticide>

husband got married in 2015 and were blessed with two daughters with the youngest being three months at the time of her conviction.

The Case of the Prosecution

It was the case of the prosecution that Maryam killed her husband on November 19, 2017 through multiple knife stabbing. The prosecution joined Maimuna Aliyu (Maryam's Mother), Aliyu Sanda (Maryam's Brother) and Sadiya Aminu (Housemaid) as co accused for tampering with evidence. In proving its case, the State called six witnesses and they testified that the accused person had intention to kill her husband by making earlier threat after seeing a nude picture in her husband's phone.

The prosecution though without any direct evidence urge the court to accept the testimonies of the six witnesses and convict Maryam of homicide punishable with death ^[8]

Defense's Case

According to the defense witness who doubles as the accused person, testifying in her own defense told the court amidst tears that though they had their differences in the course of their marriage, she did not kill her husband. Her narration was that on November 18, 2017, she used her late husband's phone to make a call, adding that that we discovered a nude picture of a lady on the phone, she went downstairs and called her the deceased so that they could talk about it. She stated that in the course of discussion which degenerated into argument, she asked the deceased to divorce her, adding that her late husband held her neck, which got her choking. The argument continued late into the evening and that around 11pm, she went to take her charger in the living room. "He pushed me and as I was falling, I mistakenly broke his shisha bottle and the water spilled on the floor. He pinned me to the ground, and I heard our daughter crying. I told him to leave me so that I could attend to her and he loosened up a bit and I struggled to my feet". She stated that while trying to hold her, the deceased fell, and she saw her husband holding his chest and saw a broken bottle in his chest which she removed and covered the chest with her scarf. She together with one Ayuba took her husband to Abuja clinic where he was confirmed dead adding that he was also taken to Maitama General Hospital where same confirmation was made. She insisted that the evidence of the prosecution witnesses is false because she never tried to kill her husband and she never wished her husband to die ^[9].

Decision of the Court

Delivering judgement, Justice Yusuf Halilu said "every available evidence" had proved that Maryam fatally stabbed her husband to death in Abuja on November 19, 2017. According to the learned Justice, the concept of justice is a three way traffic: justice to the deceased whose life was cut short in a brutal manner and whose innocent blood cries to high heavens for vengeance, justice to the accused person who cannot be denied the benefit of the procedure ordained by God in the Garden of Eden which is fair hearing or fair trial and justice to the society whose membership has been depleted by one.

The Justice pronounced that "I am left in no doubt that the defendant has not just failed to explain the death of the deceased bearing in mind her discredited colorfully dressed evidence. I am more than convinced that the defendant fatally stabbed the deceased with the same knife she threatened him with which she has also mentioned in her statement to the police. When I come to terms with the fact that the person involved is the lawfully married husband of the accused and who has a baby with him as at the time of his gruesome murder, this is not just sad but indeed, wicked. While I am in sympathy with the position of the accused person, a young mother of two daughters whose father by her inhuman action sent him to an early grave, my sentiment will not far to free the accused person from the long arm of the law. Afterall, it is indeed in law that sentiment has no place in judicial process, particularly when the sentiment is against the law" I have come to the irresistible conclusion that you; Maryam Sanda is guilty of murder of your husband whom you indeed killed in cold blood. You are hereby convicted of murder as charged ^[10].

Appraisal of the case

Without going to the merit of the case, the scope of the appraisal will be limited to three areas, to wit: whether the criminal justice system should have taken into consideration the future of the two daughters while awarding death penalty? Whether the award of death sentence will serve the end of justice? And whether there is a better way of resolving the conflict without the need to kill the accused?

The fact of the case revealed that the couple were legally married in 2015 and had their second daughter shortly after the demise of the father. This means the first daughter is less than five years old and the second one is just a baby. On whether the criminal justice system should have taken into consideration the future of the two daughters while awarding death penalty, this question can be best addressed by first understanding the essence of the criminal justice system. The law regulating crimes came to protect the sanctity of lives and properties; to deter people from taking laws into their hands and discourage self-help. Punishments are awarded to violators after a fair trial before a competent of court of law.

What makes this case unique is the relationship between the victim and the convict. They were once in love and decided in 2015 to forever live together as husband and wife. This union produced two beautiful daughters who have lost their father due to an accident or a crime of passion depending on which narration is credible and now about to lose their mother due to the pronouncement of the law. If the essence of the criminal law is to protect lives, then, consideration ought to have been given to the future of the daughters in awarding punishment. The learned trial judge should have asked himself the following questions before awarding death penalty: Upon executing the mother as directed, who will be responsible for the upbringing of the daughters? Considering the age of the daughters and the bitter fact that they just lost their father, who, in the circumstance is better placed to provide the necessary emotional and psychological support than their mother?, I think treating the case as any normal homicide trial without giving thought to the uniqueness and its peculiarity occasioned such outcome

⁸ Ebuka Onyeji "Maryam Sanda's Long Road to Death Sentence" Premium Times January 28, 2020

⁹ Clement A. Oloyede "How My Husband Died, Maryam tells the court" Daily Trust Newspaper, October 17, 2019

¹⁰ Ade Adesomoju "Maryam Sanda sentenced to death for killing husband" Punch Newspaper of Jan 28, 2020

from the judge. Even the families of the father, who are the bereaved in this case will not want to see their granddaughters suffering for the alleged crime committed by their mother.

Would the award of death sentence serve the end of justice? If the understanding of the trial judge about justice is punishing the accused, then the answer is in the affirmative. But, if it is about protecting lives and properties, death penalty to the convict will not. The uniqueness of this case makes all the differences. If the marriage between the convict and deceased was not blessed with children, perhaps, the punishment can be justified. Technically speaking, this judgement is akin to sentencing three people to death: the convict and the two daughters. What is not in doubt is, the father is dead, the mother has been sentenced to death by hanging and the State has no provision for the daughters of the convict.

On whether there is a better way of resolving the conflict without the need to kill the accused? The answer is in the affirmative for the following reasons. To start with, the Nigeria legal system and the constitution of the country provides for Islamic law to regulate the relationship between Muslims or anyone who wishes to subscribe to Islamic law jurisdiction. Islam, being a way of life and a divine religion with specific preference for protecting lives, anticipated such a scenario and adequately make provisions for resolving it, which is lacking under the conventional criminal justice system.

Considering the uniqueness of this case as earlier explained, the fact that the parties are Muslims and they squarely fall under the jurisdiction of Islamic law, the matter ought to have been referred to an Islamic law. Whereas, some people might argued that the nature and sentences provided for the crime might is beyond the jurisdiction of Islamic court, I make bold to state that since Gusau declaration of 2000, the criminal jurisdiction of Islamic courts have been expanded and there is no decided cases from the apex courts to state otherwise. If the convict were to be arraigned before an Islamic court, the understanding of justice will include the children of the marriage and perhaps a possible mediation session to apply to the family of the deceased to have mercy on the children of their son in their attempt to punish their mother.

Conclusion

Islamic law makes provision for Diyya which is loosely translated to mean blood money. Whereas, Islamic law provides for death penalty, but in exceptional circumstances such as this, it provides an avenue where blood money can be paid, and the death penalty is taken off. The logic is that, where the scenario or situation presents two evils, the lesser one should be taken. In the instant case, the innocent children have already lost their father, taking away their mother will strike a devastating blow on them which they may forever not recovered from. The psychological, emotional and social stigma that the convict will suffer is enough punishment in addition to the option of paying the blood money just for the purpose of taking care of the children. It is my humble view that where the legal system provides for a better way of resolving conflict, we should always explore it especially where such will lead to preservation of lives. It is my candid view therefore, that the decision of the trial court be appealed to the Sharia Court of Appeal where the possibility of saving the life of the

accused is high.

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